

Twenty-Seventh Legislature Third Session

Standing Committee on  
**HEALTH**

Review of the *Freedom of Information  
and Protection of Privacy Act*

NOVEMBER 2010



**COMMITTEES**  
OF THE LEGISLATIVE ASSEMBLY

**Standing Committee on Health**  
801 Legislature Annex  
Edmonton, AB T5K 1E4  
(780) 427-1350  
[Health.Committee@assembly.ab.ca](mailto:Health.Committee@assembly.ab.ca)



November 2010

To the Honourable Ken Kowalski  
Speaker of the Legislative Assembly of Alberta

The Standing Committee on Health has the honour to submit its Report to the Legislative Assembly of Alberta on its review of the *Freedom of Information and Protection of Privacy Act*.

[Original signed by Chair]

Barry McFarland, MLA  
Little Bow  
Chair, Standing Committee on Health



# CONTENTS

- Members of the Standing Committee on Health ..... 1**
- 1.0 Executive Summary ..... 2**
- 2.0 Committee Mandate ..... 5**
- 3.0 Introduction ..... 6**
- 4.0 Acknowledgements ..... 7**
- 5.0 The Public Consultation Process..... 8**
- 6.0 Committee Recommendations ..... 9**
  - 6.1 Scope and Application of the FOIP Act..... 9**
    - Definition of “Employee” ..... 9
    - Definition of “Personal Information” – Inclusion of “Sexual Orientation” ..... 9
    - Application of the FOIP Act to the Administrative Bodies of Charter Schools ..... 10
    - Application of the FOIP Act to Records of Officers of the Legislature ..... 10
    - Application of the FOIP Act to Records of the Metis Settlements Ombudsman ..... 11
  - 6.2 Access to Information ..... 11**
    - Limits on Ability of Applicants to Access Personal Records of a Third Party ..... 11
    - Responding to Access Requests – Timelines..... 12
  - 6.3 Exceptions to Disclosure ..... 13**
    - Cabinet and Treasury Board Confidences ..... 13
    - Advice from Officials ..... 13
  - 6.4 Protection of Privacy ..... 14**
    - Indirect Collection of Business Contact Information ..... 14
    - Privacy Impact Assessments and Best Practices for Disclosure of Personal Information ..... 15
    - Disclosure of Personal Information by Law Enforcement Agencies ..... 16
    - Disclosure of Personal Information of Perpetrators of Crime to Victims of Crime ..... 17
    - Collection, Use and Disclosure of Personal Information by the Workers’ Compensation Board ..... 17
  - 6.5 Office of the Information and Privacy Commissioner ..... 18**
    - Time Limit on Reviews by the Commissioner ..... 18
    - Requirement to Appoint an Adjudicator where the Commissioner has a Conflict ..... 18
    - An Adjudicator’s Role in Reviewing the Commissioner’s Decisions, Acts or Failures to Act in Relation to the Commissioner’s Legislative Oversight Role..... 19
    - Effect of Disclosure of Privileged Information to the Commissioner ..... 19
    - Disclosure of Privileged Information by the Commissioner to the Minister of Justice and Attorney General where the Information Pertains to the Commission of an Offence..... 20
  - 6.6 Offences and Penalties ..... 20**

Offences under Section 92.....	20
<b>6.7 Review of the Act.....</b>	<b>21</b>
<b>Appendices .....</b>	<b>22</b>
<b>Appendix A: Written Submissions to the Committee .....</b>	<b>22</b>
<b>Appendix B: Oral Presentations to the Committee .....</b>	<b>23</b>
<b>Appendix C: Minority Report – Laurie Blakeman, MLA .....</b>	<b>24</b>
<b>Appendix D: Minority Report – Rachel Notley, MLA .....</b>	<b>26</b>

## Members of the Standing Committee on Health

### Review of the *Freedom of Information and Protection of Privacy Act* 27<sup>th</sup> Legislature, Third Session

Barry McFarland, MLA  
Chair  
Little Bow (PC)

Bridget A. Brennan Pastoor, MLA  
Deputy Chair  
Lethbridge-East (AL)

Heather Forsyth, MLA  
Calgary-Fish Creek (WA)

Verlyn Olson, QC, MLA  
Wetaskiwin-Camrose (PC)

George Groeneveld, MLA  
Highwood (PC)

Dave Quest, MLA  
Strathcona (PC)

Fred Horne, MLA  
Edmonton-Rutherford (PC)

Dr. Raj Sherman, MLA  
Edmonton-Meadowlark (PC)

Fred Lindsay, MLA  
Stony Plain (PC)

Dr. Kevin Taft, MLA  
Edmonton-Riverview (AL)

Rachel Notley, MLA  
Edmonton-Strathcona (ND)

Tony Vandermeer, MLA  
Edmonton-Beverly-Clareview (PC)

#### Substitutions Pursuant to Standing Order 56 (2.1 – 2.4):

Ken Allred, MLA<sup>\*</sup>  
St. Albert (PC)

Wayne Drysdale, MLA<sup>†</sup>  
Grande Prairie-Wapiti (PC)

Laurie Blakeman, MLA<sup>‡</sup>  
Edmonton-Centre (AL)

Doug Elniski, MLA<sup>§</sup>  
Edmonton-Calder (PC)

Naresh Bhardwaj, MLA<sup>\*\*</sup>  
Edmonton-Ellerslie (PC)

George Rogers, MLA<sup>††</sup>  
Leduc-Beaumont-Devon (PC)

Cal Dallas, MLA<sup>‡‡</sup>  
Red Deer-South (PC)

---

<sup>\*</sup> Substitution for Dave Quest, MLA, on September 27, 2010, and George Groeneveld, MLA, on September 29, 2010.

<sup>†</sup> Substitution for Dave Quest, MLA, on July 7, 2010.

<sup>‡</sup> Substitution for Dr. Kevin Taft, MLA, on April 28, 2010, May 11, 2010, July 7, 2010, July 19, 2010, September 2, 2010, September 3, 2010, September 27, 2010, September 29, 2010, October 13, 2010, and October 25, 2010.

<sup>§</sup> Substitution for Fred Horne, MLA, on May 11, 2010, July 7, 2010, July 19, 2010, September 2, 2010, and September 29, 2010, and for Dr. Raj Sherman, MLA, on October 25, 2010.

<sup>\*\*</sup> Substitution for Fred Horne, MLA, on October 13, 2010.

<sup>††</sup> Substitution for George Groeneveld, MLA, on July 19, 2010.

<sup>‡‡</sup> Substitution for Verlyn Olson, QC, MLA, on July 19, 2010.

## 1.0 EXECUTIVE SUMMARY

The Standing Committee makes the following recommendations, including suggested amendments to the *Freedom of Information and Protection of Privacy Act*.

1. That section 1(e) of the FOIP Act be amended to read:

“employee”, in relation to a public body includes a person who performs a service for or in relation to or in connection with the public body as an appointee, volunteer or student or under a contract or agency relationship with a public body.
2. That the definition of “personal information” in section 1(n) of the FOIP Act be amended to explicitly include sexual orientation.
3. That Service Alberta consult with Alberta Education and stakeholders to determine the most appropriate legislative framework, if any, for those entities that own and operate charter schools.
4. That section 4(1)(d) of the FOIP Act be amended to specifically exclude the application of the Act to officers of the Legislature except insofar as it applies to
  - (a) the employment and remuneration of employees of the offices of the officers of the Legislature, and
  - (b) matters of administration only arising in the course of managing and operating the offices of the officers of the Legislature, including contracts for equipment and services,and that the Standing Committee on Legislative Offices consider establishing a process which is published to respond to formal privacy complaints relating to records of the officers of the Legislature that are excluded from the FOIP Act.
5. That the FOIP Act be amended to make clear that a function of a legislative officer includes functions carried out under an enactment.
6. That the FOIP Act be amended so that the right of access does not extend to a record related to an investigation by the office of the Metis Settlements Ombudsman for a period of 10 years.
7. That the Act be amended to state that a third-party applicant does not have a right of access to personal records of an employee or officer of a public body that are unrelated to that person’s employment responsibilities or to the mandate and functions of the public body.
8. That the 30-day time limit for responding to requests under section 11(1) of the FOIP Act remain as “calendar days.”
9. That section 31 of the FOIP Act be amended to state that the 20-day requirement under section 31(3) does not apply when a third party has consented to the disclosure and the disclosure would not impact another third party.
10. That section 22(2)(a) of the FOIP Act be amended to provide that the exception in section 22(1) cannot be applied after 10 years, not 15.
11. That section 24(2)(a) of the FOIP Act be amended to state that the exception in section 24(1) does not apply to information that has been in existence for 10 (rather than 15) years or more.
12. That sections 24(2.2) and 6(8) of the FOIP Act be amended by striking out “15 years” wherever it occurs and substituting “10 years”.
13. That the FOIP Act be amended to allow the indirect collection of business contact information when the information relates directly to and is necessary for an operating program or activity of the public body.



14. That the Government of Alberta establish a blue-ribbon panel to develop policies, including a policy on the use of privacy impact assessments, and best practices for protecting individual privacy in any programs, services, research projects or other initiatives that include the disclosure of personal information by a public body
  - To another public body,
  - To a custodian subject to the *Health Information Act*,
  - To an organization subject to the *Personal Information Protection Act*,
  - To any other entity that is not subject to Alberta's privacy legislation but is subject to other Canadian privacy legislation, or
  - To any other entity that is not subject to Canadian privacy legislation.
15. That Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General and stakeholders to consider an appropriate legislative framework to address issues pertaining to the disclosure of information between public bodies and other organizations or agencies that are not public bodies for crime prevention purposes and the purpose of supporting individuals participating in the criminal justice system to address issues with respect to the disclosure of information between law enforcement agencies relating to internal police investigations and any related issues.
16. That Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General and stakeholders to consider an appropriate legislative framework to address the issue of disclosure of personal information about perpetrators of crime to the victims of crime.
17. That the Minister of Employment and Immigration establish a panel consisting of representatives from the Workers' Compensation Board (WCB), workers, employers, Service Alberta, and the Ministry of Justice and Attorney General to review the outcome of the combined application of the *Workers' Compensation Act*, the FOIP Act, the *Personal Information Protection Act* and the *Health Information Act* to the collection, use, and disclosure of injured workers' medical records and to make recommendations that will if possible maximize the privacy rights of these workers while preserving the natural justice interests of employers and the WCB's ability to fulfill its statutory purpose and also ensure the consistency of adjudicative forums and remedial options available to injured workers in the event of alleged improper use or disclosure of personal medical records by either the WCB or the employer.
18. That section 69(6) of the FOIP Act be amended to match the one-year time limit in PIPA, with the ability to extend if required.
19. That Division 2, Part 5, of the FOIP Act be amended to remove references to the appointment of an adjudicator in situations where the Commissioner is in conflict.
20. That Division 2, Part 5, be amended to clarify that any decision, act or failure to act by the Commissioner in relation to his or her legislative oversight role is not reviewable by an adjudicator appointed under section 75.
21. That the FOIP Act be amended to state that when information to which legal privilege applies, including solicitor-client privilege, is disclosed to the Information and Privacy Commissioner at his or her request, the privilege is not affected by the disclosure.
22. That the FOIP Act be amended to state that the Information and Privacy Commissioner must not disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under an enactment of Alberta or Canada if the information is subject to solicitor-client privilege.
23. That section 92 of the FOIP Act be amended to remove the word "wilfully" and to create a due diligence defence.

24. That section 97 of the FOIP Act be amended to provide for a further review of the Act in six calendar years.

## 2.0 COMMITTEE MANDATE

On April 13, 2010, the Legislative Assembly passed a motion that the Standing Committee on Health (the Committee) be deemed to be the special committee of the Assembly for the purpose of conducting a comprehensive review of the *Freedom of Information and Protection of Privacy Act* as provided for in section 97 of the Act. Pursuant to that section the Committee was required to commence its review no later than July 1, 2010, and to submit its report, including any amendments recommended by the Committee, to the Assembly within one year of commencing the review. The Committee commenced its review on April 28, 2010.

### 3.0 INTRODUCTION

In 1994 the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) was given royal assent, and on October 1, 1995, it came into force for all Government of Alberta ministries. Since the Act first came into force, it has been extended to cover school jurisdictions (September 1, 1998), health-care bodies (October 1, 1998), post-secondary educational institutions (September 1, 1999) and local government bodies (October 1, 1999).

The Act provides individuals a right of access to records, including records containing their own personal information, that are in the custody or under the control of a public body subject to certain exceptions set out in the Act. The Act also establishes limitations pertaining to the collection, use and disclosure of personal information by public bodies in order to protect the privacy of individuals.

The FOIP Act has been subject to three previous reviews by all-party committees. In 1993, after the Act was introduced, Albertans were invited to share their views regarding the Act with an all-party Committee. The Committee recommended that the FOIP Act be formally reviewed three years after its implementation. On March 2, 1998, the Legislative Assembly passed a motion appointing a second all-party Committee to conduct a review of the Act and to provide the Assembly with a report, including any recommendations for amendments. The Committee submitted its report to the Assembly in March 1999 and put forward, among other things, a recommendation that the Act be subject to another review by a committee of the Assembly in three years. This recommendation was included in the Act as section 97. On November 28, 2001, the Assembly passed a motion appointing an all-party Committee to conduct the third review of the Act and to report to the Assembly. In its November 2002 final report the Committee recommended that section 97 be amended to allow for a review of the FOIP Act to commence within six years of the submission of the report of the Committee. Section 97 the Act currently states that:

A special committee of the Legislative Assembly must begin a comprehensive review of this Act by July 1, 2010 and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

This final report presents the 24 recommendations of the Committee that were agreed upon during the deliberation phase of the Committee's review.

The FOIP Act can be accessed without charge on the Queen's Printer web site ([www.qp.alberta.ca](http://www.qp.alberta.ca)).

## 4.0 ACKNOWLEDGEMENTS

The Committee wishes to acknowledge the valuable contribution of the many Albertans and others who submitted written briefs or letters and/or who appeared before the Committee.

The Committee also wishes to acknowledge the valuable assistance of the technical support staff and Legislative Assembly Office support staff.

### Technical Support

Ms Cheryl Arseneau, Service Alberta  
Ms Kim Kreutzer-Work, Service Alberta  
Ms Hilary Lynas, Service Alberta  
Ms Marylin Mun, Office of the Information and Privacy Commissioner  
Ms Di Nugent, Service Alberta

### Legislative Assembly Office Support Staff

Ms Melanie Friesacher, Legislative Assembly Office  
Ms Stephanie LeBlanc, Legislative Assembly Office  
Mr. Duncan Leung, Legislative Assembly Office  
Dr. Philip Massolin, Legislative Assembly Office  
Ms Tracey Sales, Legislative Assembly Office  
Mrs. Karen Sawchuk, Legislative Assembly Office  
*Hansard* staff, Legislative Assembly Office

## 5.0 THE PUBLIC CONSULTATION PROCESS

As part of the Committee's review of the FOIP Act, Committee meetings, which the public could attend and which were streamed live on the Legislative Assembly website, were held on April 28, 2010, May 11, 2010, July 7, 2010, July 19, 2010, September 27, 2010, September 29, 2010, October 13, 2010, and October 25, 2010.

Advertisements were placed in nine daily and over 100 weekly newspaper publications across Alberta inviting the public to provide written submissions to the Committee with suggested changes to the FOIP Act. Letters were also sent to stakeholders inviting written submissions for the Committee's consideration. The Committee received a total of 35 written submissions from the public and various stakeholders. A complete list of these individuals and groups is provided in Appendix A of this report.

A discussion paper was prepared in part to assist individuals with completing their submissions to the Committee. That paper, dated May 7, 2010, was posted on the Committee's website.

On July 7, 2010, the Committee heard oral presentations from both the Information and Privacy Commissioner of Alberta and the Minister of Service Alberta. These presentations provided the Committee with background information regarding the FOIP Act and addressed issues and concerns that have arisen with respect to the Act since the previous review.

The Committee also held public hearings on September 2, 2010, and September 3, 2010, for individuals and organizations that requested to make presentations before the Committee. A complete list of the presenters is provided in Appendix B of this report.

A variety of issues were raised in the written and oral submissions to the Committee with respect to numerous aspects of the FOIP Act, including the scope and application of the Act, access to information, exceptions to disclosure, protection of privacy, the Information and Privacy Commissioner and general provisions including those regarding fees and offences.

## 6.0 COMMITTEE RECOMMENDATIONS

### 6.1 Scope and Application of the FOIP Act

#### Definition of “Employee”

Section 1(e) of the FOIP Act defines “employee” as including “a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body.” Decisions of the Information and Privacy Commissioner have held that public bodies will be held accountable under the FOIP Act for the actions of their employees.

The Committee heard that increasingly public bodies are partnering or collaborating with outside entities. If a relationship is, for example, an equal partnership as opposed to a contractual relationship under which the outside entity provides a service to the public body, an entity may not be caught under the definition of “employee” and, accordingly, the public body may not be responsible for that entity’s actions under the FOIP Act.

The Committee also heard that in the case of such an arrangement between a public body and a not-for-profit organization, if the not-for-profit organization is not captured under the definition of “employee” under the FOIP Act, a gap in privacy protection may arise since not-for-profit organizations are not subject to the *Personal Information Protection Act* unless they are carrying out a commercial activity.

The Committee agreed that entities that are partnering or collaborating with public bodies should be captured under the definition of “employee” and therefore recommends:

**1. That section 1(e) of the FOIP Act be amended to read:**

**“employee”, in relation to a public body includes a person who performs a service for or in relation to or in connection with the public body as an appointee, volunteer or student or under a contract or agency relationship with a public body.**

#### Definition of “Personal Information” – Inclusion of “Sexual Orientation”

Section 1(n) of the FOIP Act defines “personal information” as “recorded information about an identifiable individual.” The definition goes on to provide that personal information includes a number of different pieces of information, including an individual’s name, age, sex, marital status, ethnicity and home or business address. The section does not, however, specifically mention sexual orientation.

The term “personal information” is used throughout the FOIP Act. An individual may access his or her personal information and request corrections to it. Part 2 of the FOIP Act restricts public bodies in how they may collect, use and disclose personal information.

The Committee heard that sexual orientation would most likely already come within the definition of “personal information.” However, since so many other pieces of information are specified within this definition, the Committee agreed that sexual orientation should be included for clarity.

Therefore, the Committee recommends:

**2. That the definition of “personal information” in section 1(n) of the FOIP Act be amended to explicitly include sexual orientation.**

## Application of the FOIP Act to the Administrative Bodies of Charter Schools

The FOIP Act applies to public bodies. Charter schools are public bodies under the FOIP Act (see the definition of “educational body” in section 1(d)(vi) of the FOIP Act).

The Committee heard from one submitter that there is ambiguity surrounding the application of the FOIP Act to the administrative bodies of charter schools. The submitter requested that the administrative bodies be brought fully within the scope of the FOIP Act to eliminate any confusion relating to whether a particular action taken by an administrative body is subject to the FOIP Act or to the *Personal Information Protection Act*.

The Committee determined that further investigation into this issue was required in order to ascertain whether amendments to the legislation are necessary and to ensure that, if so, an appropriate legislative framework is implemented.

Therefore, the Committee recommends:

- 3. That Service Alberta consult with Alberta Education and stakeholders to determine the most appropriate legislative framework, if any, for those entities that own and operate charter schools.**

## Application of the FOIP Act to Records of Officers of the Legislature

The offices of the five officers of the Legislature – the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner and the Information and Privacy Commissioner – are public bodies under the FOIP Act. However, certain records of officers of the Legislature are excluded from the Act. Section 4(1) of the FOIP Act states that the Act “applies to all records in the custody or under the control of a public body” except for those records listed in clauses (a) through (u). One type of excluded record, listed in clause (d), is “a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer’s functions under an Act of Alberta.”

The Committee heard that in a recent decision of the Alberta Court of Queen’s Bench the Court determined that section 4(1)(d) did not exclude records of an officer of the Legislature from the provisions of the FOIP Act dealing with protection of privacy. In other words, this section excluded these records from Part 1 of the Act, dealing with access to information, but not from Part 2, which addresses, among other things, the collection, use and disclosure of personal information.

Concerns were raised by the officers of the Legislature respecting how this decision could affect the ways in which they carry out their mandates. These concerns included being constrained in the ability to collect information that is required to fulfill a statutory mandate and being constrained in the ability to report candidly.

The Committee agreed that an amendment to the legislation would be necessary to address these concerns. However, the Committee was also concerned that this would take away an avenue for resolving disputes regarding the misuse of an individual’s information. Therefore, the Committee agreed that the Standing Committee on Legislative Offices should consider establishing a process to respond to complaints regarding officers of the Legislature.

The Committee wanted to address the issue raised by the officers but still preserve some ability for persons with concerns regarding the privacy of their personal information to have an opportunity to have their complaints heard. The Committee therefore recommends:



4. That section 4(1)(d) of the FOIP Act be amended to specifically exclude the application of the Act to officers of the Legislature except insofar as it applies to

- (a) the employment and remuneration of employees of the offices of the officers of the Legislature, and

- (b) matters of administration only arising in the course of managing and operating the offices of the officers of the Legislature, including contracts for equipment and services,

**and that the Standing Committee on Legislative Offices consider establishing a process, which is published, to respond to formal privacy complaints relating to records of the officers of the Legislature that are excluded from the FOIP Act.**

The Committee also considered whether the term “Act” under the current wording of section 4(1)(d) should be changed to “enactment.” The Committee heard that the term “enactment” captures not only the statutes of Alberta but also the regulations. The Committee agreed that this is an appropriate change and recommends:

5. That the FOIP Act be amended to make clear that a function of a legislative officer includes functions carried out under an enactment.

The Committee acknowledges that this change would be unnecessary if the language proposed in recommendation 4 is adopted, because that language does not include a reference to functions of a legislative officer carried out under an Act.

## **Application of the FOIP Act to Records of the Metis Settlements Ombudsman**

The office of the Metis Settlements Ombudsman is established by the *Metis Settlements Ombudsman Regulation*, made pursuant to section 175.1 of the *Metis Settlements Act*. The office of the Metis Settlements Ombudsman is designated as a public body in Schedule 1 of the *Freedom of Information and Protection of Privacy Regulation*. While certain records of the provincial Ombudsman are excluded under the Act, records of the Metis Settlements Ombudsman are not.

The Committee heard that the functions of the office of the Metis Settlements Ombudsman, which include receiving and investigating complaints, are such that a provision excluding records of that office is necessary to provide complainants with an additional assurance of confidentiality.

The Committee concluded that in order to preserve the integrity of the office, an amendment to the FOIP Act excluding the records for a certain period of time would be appropriate. Therefore, the Committee recommends:

6. That the FOIP Act be amended so that the right of access does not extend to a record related to an investigation by the office of the Metis Settlements Ombudsman for a period of 10 years.

## **6.2 Access to Information**

### **Limits on Ability of Applicants to Access Personal Records of a Third Party**

Section 6(1) of the FOIP Act allows an applicant to access records that are under the custody or control of a public body. The Committee heard that many public bodies acknowledge that their employees' work and personal lives are intertwined and therefore permit employees to use office e-mail, telephones, et cetera, for personal reasons. In these circumstances, the public body has custody of employees' personal records. A submitter noted that these records have been the subject of requests for access to

information and are, in the submitter's view, an inappropriate use of the FOIP Act and a waste of the public body's resources.

The right of access to information in section 6 of the FOIP Act is subject to the exceptions within the Act, including an exception in section 17, which provides that "[t]he head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." The Committee considered this exception and concluded that a separate provision expressly excluding personal records of employees from the right of access to information was required. It was agreed that a public body should not be required to provide access to employees' personal records if those records are unrelated to the person's employment duties or to the mandate and function of the public body.

The Committee further agreed that an amendment to the FOIP Act implementing this recommendation should not limit an applicant's ability to access his or her own personal information in the custody or control of a public body.

The Committee therefore recommends:

- 7. That the Act be amended to state that a third-party applicant does not have a right of access to personal records of an employee or officer of a public body that are unrelated to that person's employment responsibilities or to the mandate and functions of the public body.**

## **Responding to Access Requests – Timelines**

Section 11(1) of the FOIP Act provides that a public body has 30 days to respond to a request for access to information, with the possibility for extension in certain circumstances. The Committee heard from certain stakeholders that the initial 30-day period was not always sufficient time in which to complete a response. Some of the stakeholders raising concerns with the length of this period suggested that the 30 days be changed to "business days" as opposed to "calendar days."

The Committee heard from other stakeholders who disagreed with the proposal to extend the 30-day period by changing the 30 days to business days. One stakeholder noted that if the 30 days is insufficient, the public body has the ability to extend that time.

The Committee agreed that the time limit of 30 calendar days is sufficient and should not be changed, and therefore recommends:

- 8. That the 30-day time limit for responding to requests under section 11(1) of the FOIP Act remain as "calendar days."**

Another issue raised with respect to the period within which a public body must respond to an access request was the mandatory 20-day waiting period imposed by section 31(3) of the FOIP Act. Section 30 of the Act provides that when the head of a public body is considering giving access to a record that may contain information that affects the interests of a third party under section 16 of the Act or the disclosure of which may be an unreasonable invasion of a third party's privacy under section 17 of the Act, the head of that public body must give notice to the third party. That notice, as required by section 30(4), states the third party may within 20 days after the notice is given consent to the disclosure or explain to the public body why the information should not be disclosed. The head of a public body is subject to the usual 30-day period to respond to the access request, but the head may not make a decision before the earlier of 21 days after the notice is given to the third party and the day a response is received from the third party.

Section 31(2) of the FOIP Act provides that the head of a public body who has made a determination regarding whether access to a record will be given must give notice to both the applicant and the third party of the decision and the reasons for the decision. However, section 31(3) requires that the notice, if

the decision is made to give access to all or part of the record, must “state that the applicant will be given access unless the third party asks for a review under Part 5 within 20 days after that notice is given.”

The Committee heard that this 20-day waiting period is unnecessary in circumstances where the third party has consented to the disclosure and there is no additional affected third party.

The Committee agreed that this change would eliminate delays in accessing information under the FOIP Act and therefore recommends:

- 9. That section 31 of the FOIP Act be amended to state that the 20-day requirement under section 31(3) does not apply when a third party has consented to the disclosure and the disclosure would not impact another third party.**

## **6.3 Exceptions to Disclosure**

### **Cabinet and Treasury Board Confidences**

Sections 16 through 29 of the FOIP Act contain a number of exceptions, both mandatory and discretionary, that allow a public body to withhold information from disclosure to an applicant. One of these exceptions is found in section 22 of the Act. Section 22(1) requires the head of a public body to refuse to disclose

information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.

The Committee heard that while this exception has important objectives, the harm that could be caused, including harm to cabinet solidarity, decreases with the passage of time. Section 22(2)(a) of the FOIP Act currently provides that this mandatory exception does not apply to “information in a record that has been in existence for 15 years or more.” One submitter suggested that this could be decreased to 10 years. The Committee agreed that undue harm would not likely result from such a change and that the reduction from 15 years to 10 years would enhance transparency and access to government records.

The Committee recommends:

- 10. That section 22(2)(a) of the FOIP Act be amended to provide that the exception in section 22(1) cannot be applied after 10 years, not 15.**

### **Advice from Officials**

Another exception to disclosure is found in section 24(1) of the FOIP Act. This is a discretionary exception. Section 24(1) permits a public body to refuse to disclose information that could reasonably be expected to reveal:

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,
- (b) consultations or deliberations involving
  - (i) officers or employees of a public body,
  - (ii) a member of the Executive Council, or
  - (iii) the staff of a member of the Executive Council,
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations,

- (d) plans relating to the management of personnel or the administration of a public body that have not yet been implemented,
- (e) the contents of draft legislation, regulations and orders of members of the Executive Council or the Lieutenant Governor in Council,
- (f) the contents of agendas or minutes of meetings
  - (i) of the governing body of an agency, board, commission, corporation, office or other body that is designated as a public body in the regulations, or
  - (ii) of a committee of a governing body referred to in subclause (i),
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision, or
- (h) the contents of a formal research or audit report that in the opinion of the head of the public body is incomplete unless no progress has been made on the report for at least 3 years.

Subsection (2.1) contains a mandatory exception to disclosure that requires a public body to refuse to disclose “a record relating to an audit by the Chief Internal Auditor of Alberta that is created by or for the Chief Internal Auditor of Alberta” or “information that would reveal information about an audit by the Chief Internal Auditor of Alberta.”

Both the discretionary exception in section 24(1) and the mandatory exception in section 24(2.1) are subject to a restriction that these exceptions do not apply after a period of 15 years has elapsed. In the case of the section 24(1) exception the exception does not apply to information “that has been in existence for 15 years or more” (see section 24(2)(a)). In the case of the section 24(2.1) exception the exception does not apply “if 15 years or more has elapsed since the audit to which the record or information relates was completed” or “if the audit to which the record or information relates was discontinued or if no progress has been made on the audit for 15 years or more” (see section 24(2.2)).

For reasons similar to those cited above with respect to the section 22 exception, the Committee agreed that the period of time required to elapse in order for the exception to no longer apply should be reduced from 15 to 10 years. The Committee also discussed that a similar change should be made to section 6(8) of the FOIP Act in order to ensure consistency within the Act among the provisions relating to the Chief Internal Auditor.

The Committee therefore recommends:

- 11. That section 24(2)(a) of the FOIP Act be amended to state that the exception in section 24(1) does not apply to information that has been in existence for 10 (rather than 15) years or more.**
- 12. That sections 24(2.2) and 6(8) of the FOIP Act be amended by striking out “15 years” wherever it occurs and substituting “10 years”.**

## **6.4 Protection of Privacy**

### **Indirect Collection of Business Contact Information**

Section 34 of the FOIP Act is concerned with the manner in which personal information is collected. Under this section the public body must collect personal information directly from the person to whom the information relates, with certain exceptions as provided for in section 34(1)(a) to (o). These exceptions include if another method of collection is authorized by the individual, if the information is collected for the purpose of law enforcement, if the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body, and if the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body.)

It was brought to the Committee's attention, in written and oral submissions, that the definition of "personal information" in the FOIP Act includes an individual's name, business address and telephone number (section 1(n)(i)) and, further, that the Information and Privacy Commissioner has found that business e-mail addresses are also personal information. Because the indirect collection of personal information, including business address, et cetera, is not permitted, a public body is not able to collect that information from a publicly available source, such as a website, but, rather, must collect it from the individual directly. One circumstance put forward by a submitter in which a public body would benefit from the ability to collect business contact information indirectly was one in which an economic development program needs to compile information about businesses in a particular industry in Alberta in order to promote those businesses at a trade show.

The Committee deliberated on the issue of whether the FOIP Act should permit the indirect collection of business contact information. Concern was expressed about possible undesirable consequences for individuals whose personal information might be indirectly collected. It was also stated that it would be desirable that business information that is considered personal information be collected directly from the business owner; i.e., the individual as provided for currently under section 34 of the Act.

The Committee discussed a possible amendment to the FOIP Act that would enable the indirect collection of business contact information by the public body only where the information "relates directly to and is necessary for an operating program or activity of the public body." The Committee agreed with the intent of the proposed recommendation to make the operations of public bodies more efficient and concurred that restricting indirect information collection to the operations and activities of the public body was a positive aspect of the recommendation.

The Committee recommends:

- 13. That the FOIP Act be amended to allow the indirect collection of business contact information when the information relates directly to and is necessary for an operating program or activity of the public body.**

## **Privacy Impact Assessments and Best Practices for Disclosure of Personal Information**

A number of submissions to the Committee put forward a recommendation that public bodies should be required to prepare privacy impact assessments in certain circumstances. The Committee heard that the access and privacy implications of the collection, use and disclosure of personal information have increased with new technologies in the form of computer and database applications, social media networking tools and Web 2.0 software, among other technological innovations, becoming an integral part of the operations of many public bodies and in the lives of Albertans.

One submitter noted that the purpose for implementing mandatory privacy impact assessments would not be to impose a burden on public bodies but instead "to assure Albertans that the public bodies have fulfilled their due diligence and their statutory obligation under the FOIP Act in ensuring that Albertans' privacy is protected."

The Committee noted that there is pressure for the opening up of information sharing between public bodies. Pressure for information sharing exists in a number of different sectors, including police, education and research. The Committee discussed that while research activities in general constitute a public good, for instance in promoting evidence-based policy-making or to advance the state of knowledge generally, Albertans should have the right to consent to the use of personal information for research purposes.

Section 40 of the FOIP Act allows the disclosure of personal information by a public body only under particular circumstances, most of which are listed in subsection (1). The Committee considered section 40(1)(i) of the FOIP Act, which permits disclosure of personal information "to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee

or member to whom the information is disclosed.” The Committee noted that despite this provision submitters still raised concerns about an inability to share information with respect to certain programs.

The Committee acknowledged that information sharing is a complex issue and that its merits and drawbacks would be best considered by a panel of experts and through additional input from stakeholders.

Therefore, the Committee recommends:

- 14. That the Government of Alberta establish a blue-ribbon panel to develop policies – including a policy on the use of privacy impact assessments – and best practices for protecting individual privacy in any programs, services, research projects or other initiatives that include the disclosure of personal information by a public body**
- **To another public body,**
  - **To a custodian subject to the *Health Information Act*,**
  - **To an organization subject to the *Personal Information Protection Act*,**
  - **To any other entity that is not subject to Alberta’s privacy legislation but is subject to other Canadian privacy legislation, or**
  - **To any other entity that is not subject to Canadian privacy legislation.**

### **Disclosure of Personal Information by Law Enforcement Agencies**

In addition to the general issue of best practices for information sharing the Committee also discussed a specific request that amendments be made to the FOIP Act to facilitate the exchange of information for certain law enforcement purposes.

The Committee heard from a police service that the exchange of information between the service and community-focused organizations that provide assistance to potential offenders, offenders, victims and others is often hampered by the FOIP Act since the disclosure of personal information is not permitted. The service recommended that the Act be amended to permit these disclosures. Another submitter made a similar recommendation that the FOIP “Act should specifically allow for disclosure by law enforcement agencies to organizations and agencies that are not public bodies for the purpose of participating in programs and initiatives aimed at crime prevention and support for participants in the criminal justice system.”

A concern was raised by the Committee that there are alternative means to share information rather than giving law enforcement agencies additional powers under the FOIP Act, including asking the consent of individuals to disclose their personal information to, for instance, groups that focus on crime prevention.

An additional issue was raised for discussion, namely that the Government should consider whether the FOIP Act needs to be amended to permit police agencies to share personal information relating to internal investigations as opposed to criminal investigations. The Committee heard that currently a potential problem exists in that internal investigations are hindered because law enforcement agencies are not allowed under the FOIP Act to share personal information relating to an internal matter. It was remarked in response that the FOIP Act provides for this sharing of personal information under section 40(1)(q). In turn, it was pointed out that this sharing of information can occur in a criminal investigation but that an obstacle appears to exist for investigations relating to internal matters.

The Committee broached the larger question of what is the appropriate legislative framework to govern the protection and disclosure of information concerning law enforcement issues and other programs supporting law enforcement, such as community safety programs. Accordingly, the Committee recommends:

- 15. That Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General and stakeholders to consider an appropriate legislative framework to address issues pertaining to the disclosure of information between public bodies and other organizations or agencies that are not public bodies for crime prevention purposes and the purpose of supporting individuals participating in the criminal justice system to address issues with respect to the disclosure of information between law enforcement agencies relating to internal police investigations and any related issues.**

### **Disclosure of Personal Information of Perpetrators of Crime to Victims of Crime**

The Committee received a submission that the FOIP Act should be amended to allow for the disclosure of personal information about a perpetrator to a victim of crime because as it stands, victims of crime often do not have this kind of information disclosed to them.

Section 32 of the FOIP Act pertains to the disclosure of information when such disclosure involves the risk of significant harm to the health and safety of the public or to the environment. Under section 32 the head of a public body is obligated to disclose information related to risks with respect to these emergency situations.

The Committee discussed whether section 32 of the Act already provides the authority for a public body to disclose personal information about perpetrators of a crime to the victims of the crime and, as a result, whether amendments to the Act need be considered. The Committee heard that provisions exist under the *Corrections Act* and *Victims of Crime Act* for disclosure of this information under these circumstances. However, the Committee concluded that because section 32 may or may not in fact address the issue raised in the submission, it would be wise to have the relevant Government of Alberta ministries review the issue.

Therefore, the Committee recommends:

- 16. That Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General and stakeholders to consider an appropriate legislative framework to address the issue of disclosure of personal information about perpetrators of crime to the victims of crime.**

### **Collection, Use and Disclosure of Personal Information by the Workers' Compensation Board**

The Committee heard that there was confusion regarding the ability of the Workers' Compensation Board to disclose information to an injured worker's employer, whether these disclosures are permitted under the FOIP Act and whether the injured worker has any recourse, including requesting a review by the Office of the Information and Privacy Commissioner, in the event of the misuse of that information.

The Committee acknowledged that the issue required further consideration, but because of the complexity of the matter and the involvement of legislation other than the FOIP Act, the Committee was of the view that the issue should be referred to an expert panel for review. The Committee agreed that this panel should consider how best to manage the collection, use and disclosure of information regarding injured workers while keeping in mind the objective of maximizing workers' privacy while still providing information to the employer that is necessary to comply with the principles of natural justice.

Therefore, the Committee recommends:

- 17. That the Minister of Employment and Immigration establish a panel consisting of representatives from the Workers' Compensation Board (WCB), workers, employers, Service Alberta, and the Ministry of Justice and Attorney General to review the outcome of the combined application of the *Workers' Compensation Act*, the FOIP Act, the *Personal Information Protection Act* and the *Health Information Act* to the collection, use, and disclosure of injured workers' medical records and to make recommendations that will if possible maximize the privacy rights of these workers while preserving the natural justice interests of employers and the WCB's ability to fulfill its statutory purpose and also ensure the consistency of adjudicative forums and remedial options available to injured workers in the event of alleged improper use or disclosure of personal medical records by either the WCB or the employer.**

## **6.5 Office of the Information and Privacy Commissioner**

### **Time Limit on Reviews by the Commissioner**

Under section 69(6) of the FOIP Act, a review by the Information and Privacy Commissioner must be completed within 90 days after the request is received unless the Commissioner notifies the person who asks for the review, the head of the public body concerned and any other person given a copy of the request for review that the Commissioner is extending that period and provides an anticipated date for the completion of the review.

The Committee acknowledged the submissions from the Commissioner that even if the Commissioner had unlimited resources, it would not be possible to complete a mediation/investigation, conduct an inquiry and issue an order within 90 days of receiving a request for review. When a matter goes to inquiry, the parties must be notified, providing them time to prepare their submissions, which are then provided to the Commissioner's office. Then the Commissioner must prepare and issue his decision. The Committee heard that this entire process requires more time than the 90 days allocated under section 69(6).

A concern was raised that an increase from a 90-day to a one-year time limit would be excessive and would result in undue delays in completing reviews. Hence, a 180-day time limit was proposed instead. The Committee ultimately opposed this proposal, indicating that the entire one-year time limit would not always have to be used and that providing one year for reviews provides the Commissioner's office with flexibility to complete its work.

The Committee therefore recommends:

- 18. That section 69(6) of the FOIP Act be amended to match the one-year time limit in PIPA, with the ability to extend if required.**

### **Requirement to Appoint an Adjudicator where the Commissioner has a Conflict**

Division 2 of Part 5 of the FOIP Act contains provisions dealing with situations in which an adjudicator, a judge of the Court of Queen's Bench of Alberta, is appointed by the Lieutenant Governor in Council to conduct reviews in certain circumstances. This includes situations in which the Information and Privacy Commissioner is asked "to review a decision, act or failure to act of a head of a public body and the Commissioner had been a member, employee or head of that public body or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body" (section 78(1)).

In submissions to the Committee the Commissioner recommended that "Division 2, Part 5 of the FOIP Act be amended to remove references to the appointment of an adjudicator in situations where the Commissioner is in conflict." Similarly, the Ministry of Service Alberta recommended that "the provisions



relating to adjudication be amended to remove the requirement to appoint an external adjudicator to hear conflict of interest cases.”

The Commissioner noted as the rationale for his recommendation that when the FOIP Act came into force in 1995, the Commissioner had a dual role, serving as both Ethics Commissioner and Information and Privacy Commissioner. However, the dual role no longer exists. Further, the Commissioner explained that he is no longer the sole decision-maker, as there are other decision-makers in the Office of the Information and Privacy Commissioner (OIPC). These decision-makers are also called adjudicators. Service Alberta noted that at the time the FOIP Act was drafted, the Commissioner heard all inquiries and issued all orders. Therefore, matters in which the Commissioner has a conflict can be delegated to staff within the OIPC and it is unnecessary for an external adjudicator to be appointed in cases where the Commissioner has a conflict. If a conflict did arise, the Commissioner has the ability to delegate to a person outside of his office.

The Committee agreed with the rationale set out in the submissions and recommends:

- 19. That Division 2, Part 5, of the FOIP Act be amended to remove references to the appointment of an adjudicator in situations where the Commissioner is in conflict.**

### **An Adjudicator’s Role in Reviewing the Commissioner’s Decisions, Acts or Failures to Act in Relation to the Commissioner’s Legislative Oversight Role**

Under section 75(1) of the FOIP Act the Lieutenant Governor in Council is given authority to designate a judge of the Court of Queen’s Bench of Alberta to act as an adjudicator. Section 75(2) provides that an adjudicator is not permitted to review an order of the Commissioner made under the FOIP Act.

The Committee noted that the Commissioner, in his submission to the Committee, made the recommendation that the role of an adjudicator appointed under section 75 be clarified in the Act. The Commissioner pointed out that he has two distinct roles: (1) overseeing and administering the Act, and (2) acting as head of a public body; i.e., the OIPC. The Commissioner cited a recent decision of an adjudicator appointed under the FOIP Act in which it was noted that it is only acts or omissions by the Commissioner acting in his or her capacity as head of a public body that are subject to review by an adjudicator. The adjudicator cited a B.C. superior court judge, acting as an adjudicator in that province, who wrote: “This is an important distinction because the bulk of the Commissioner’s work, which includes monitoring compliance by other public bodies, investigating complaints and promoting public awareness of the act, is subject only to judicial review and is not reviewable by an adjudicator.”

The Committee agreed with this rationale and recommends:

- 20. That Division 2, Part 5, be amended to clarify that any decision, act or failure to act by the Commissioner in relation to his or her legislative oversight role is not reviewable by an adjudicator appointed under section 75.**

### **Effect of Disclosure of Privileged Information to the Commissioner**

Under section 56(2) of the FOIP Act the Commissioner is given the authority to “require any record to be produced to the Commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of [the FOIP] Act.”

The Committee heard that a provision in the *Personal Information Protection Act* was recently amended to state that legal privilege is not affected if information to which legal privilege applies is disclosed to the Information and Privacy Commissioner at the Commissioner’s request. The Committee noted a comment in the submission from the Ministry of Service Alberta that pointed out that the effect of this amendment is to provide certainty for PIPA organizations concerning the protection of solicitor-client privilege. The submission states that the FOIP Act is unclear as to whether legal privilege, including solicitor-client privilege, is waived when an individual or public body discloses privileged information to the

Commissioner. The submission proposed an amendment to the Act that “will assure public bodies that they can comply with a request from the Commissioner for information without losing the protection of legal privilege that applies to their information.”

Another submitter made a similar recommendation that solicitor-client privilege be “expressly preserved and protected despite the Commissioner’s confidential examination of records in issue when examination is necessary to verify the existence of the privilege.”

The Committee recommends:

- 21. That the FOIP Act be amended to state that when information to which legal privilege applies, including solicitor-client privilege, is disclosed to the Information and Privacy Commissioner at his or her request, the privilege is not affected by the disclosure.**

### **Disclosure of Privileged Information by the Commissioner to the Minister of Justice and Attorney General where the Information Pertains to the Commission of an Offence**

Section 59(4) of the FOIP Act provides that “[t]he Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.”

The Committee heard that a similar provision in the *Personal Information Protection Act* (PIPA) was amended to expressly prohibit the Commissioner from disclosing information to the Minister of Justice and Attorney General pursuant to the provision that is subject to solicitor-client privilege. The Committee noted a comment in the submission from the Ministry of Service Alberta, which points out that this prohibition “protects the privilege of parties involved in investigations and inquiries conducted under PIPA. It can be viewed as assurance to organizations that such protected information will only be used by the Commissioner in relation to his legislated investigations or inquiries and further acknowledges the importance of solicitor-client privilege.” Adding a similar provision to the FOIP Act “would provide public bodies with the same kind of assurance.”

The Committee therefore recommends:

- 22. That the FOIP Act be amended to state that the Information and Privacy Commissioner must not disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under an enactment of Alberta or Canada if the information is subject to solicitor-client privilege.**

## **6.6 Offences and Penalties**

### **Offences under Section 92**

Section 92 sets out a number of offences, which include collecting, using or disclosing personal information in contravention of Part 2 of the Act and failing to comply with an order made by the Commissioner under section 72 of the Act. A person who commits an offence under this section is liable to a fine of not more than \$10,000 except if the offence committed is that of disclosing personal information to which the FOIP Act applies “pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta,” in which case the fine in the case of an individual is not less than \$2,000 and not more than \$10,000 and in the case of any other person is not less than \$200,000 and not more than \$500,000.

The offences in section 92 must be committed “wilfully.” In other words, there must be proof that the offence was committed intentionally. The Committee heard that it is often very difficult for the Crown to

prove intent, particularly in circumstances where the accused is a public body, not an individual. Further, the Committee heard that section 59 of the *Personal Information Protection Act*, which parallels section 92 of the FOIP Act, was recently amended to remove the word “wilfully” and include a due diligence defence, which provides that “[n]either an organization nor an individual is guilty of an offence under this Act if it is established to the satisfaction of the court that the organization or individual, as the case may be, acted reasonably in the circumstances that gave rise to the offence.”

The Committee agreed that this proposal should be supported and recommends:

- 23. That section 92 of the FOIP Act be amended to remove the word “wilfully” and to create a due diligence defence.**

## **6.7 Review of the Act**

The Committee discussed whether section 97 of the FOIP Act, pursuant to which the Committee conducted its current review, should be amended to provide that a further review of the Act take place.

The Committee agreed that a further review should take place within six years and therefore recommends:

- 24. That section 97 of the FOIP Act be amended to provide for a further review of the Act in six calendar years.**

## APPENDICES

### Appendix A: Written Submissions to the Committee

NAME	ORGANIZATION
Abrams, Mark	Private Citizen
Alberta Liberal Caucus	Alberta Liberal Caucus
Baran, Larry	Vulcan County
Bulva, Cecile	Venta Care Centre
Button, G.B. (Gord) Fjeldheim, Brian Saher, Merwan Wilkinson, Neil	Alberta Ombudsman, Auditor General of Alberta, Ethics Commissioner of Alberta, and Chief Electoral Officer of Alberta
Checkel, Ken	Clearview Public Schools
da Costa, Darryl	Edmonton Police Service
Doig, Christopher	Office of the President, Alberta Medical Association
Van Fraassen, Barbara J.	Rocky View County
Gibson, Brian	Edmonton Police Commission
Haddad, David	Private Citizen
Hamdon, Brad	Alberta Universities Association
Hancock, Hon. Dave, MLA	Office of the Minister, Alberta Education
Heslep, Cathryn	Grant MacEwan University
Heth, C. Donald	Association of Academic Staff, University of Alberta
Hunley, Donna	Private Citizen
Klimchuk, Hon. Heather, MLA	Office of the Minister, Service Alberta, on behalf of the Government of Alberta
Landry, Anne	Private Citizen
Mackay, Bauni	Alberta Press Council
Merrell, Dennis	Alberta Weekly Newspapers Association
Murphy, W.	Private Citizen
Newell, Charles	County of Thorhild No. 7
Randall, Stephen J., PhD, FRSC Ernst, Kelly, PhD Steward, Gillian	Rocky Mountain Civil Liberties Association
Romeril, Allan K.	County of Warner No. 5
Roozen, Catherine	Alberta Health Services
Shane, Margaret	Alberta Teachers' Association
Sinclair, Alayne	City of Edmonton
Singleton, Robyn, QC (Man.)	Strathcona County
Smith, Guy	Alberta Union of Provincial Employees
Stubicar, Vlasta	Private Citizen
Thompson, Don	Law Society of Alberta
Tromp, Stanley	B.C. Freedom of Information and Privacy Association
Vincent, Pat	Parkland County
Work, Frank J., QC	Office of the Information and Privacy Commissioner
Wright, Doug	Leduc County

## Appendix B: Oral Presentations to the Committee

NAME	ORGANIZATION
Andersen, Karen	Edmonton Police Service
Bachynski, Brian Merrell, Dennis	Alberta Weekly Newspapers Association
Button, G.B. (Gord) Fjeldheim, Brian Saher, Merwan Wilkinson, Neil	Officers of the Alberta Legislature
Campbell, Alec	Excela Associates Inc.
Clintberg, Ernest, PhD Shane, Margaret	Alberta Teachers' Association
Davis, Harry Munn Gafuik, Jo-Ann	Alberta Universities Association
Fuller, Tom Smith, Guy	Alberta Union of Provincial Employees
Giesbrecht, Aileen Mann, Kate Sinclair, Alayne	City of Edmonton
Haddad, David	Private Citizen
Heth, Donald Renke, Brygeda	Association of Academic Staff, University of Alberta
Landry, Anne	Private Citizen
Mackay, Bauni	Alberta Press Council
Newell, Charles Small, Dan	County of Thorhild
Pellis, Paul	Service Alberta
Penny, Michael	Law Society of Alberta
Tromp, Stanley	Private Citizen

## Appendix C: Minority Report – Laurie Blakeman, MLA



LEGISLATIVE ASSEMBLY  
ALBERTA

**Laurie Blakeman**  
**MLA, Edmonton Centre**  
**House Leader, Alberta Liberal Caucus**  
**Critic for Culture and Community Spirit, and Environment**

---

### *Freedom of Information and Protection of Privacy Act Review: Minority Report*

---

Throughout the deliberations of this Committee on Alberta’s *Freedom of Information and Protection of Privacy Act* (the FOIP Act), I have appreciated the attention and consideration to proposals of the many participants in this important process.

The Committee’s final report presents 23 recommendations and summarizes some of the debate on those recommendations. However, the report does not include information on proposals that are not included in the Committee’s final report. Some of the concerns raised by stakeholders, and the proposals that were put forward to address these concerns, deserve to be recorded.

The right of access to information under the FOIP Act is the cornerstone of openness and accountability in the public sector. Since the Act came into force in 1995, additions to the number of exclusions and exceptions to disclosure have weakened the legislation in important respects. I am particularly disappointed that the exclusion for EPCOR and ENMAX, added at the time of electricity deregulation, was not removed during this review, long after the anticipated need for special treatment has passed. Many public bodies operate businesses without issues under the FOIP Act – there is no need to make exceptions for utility businesses.

Some of the public bodies that made submissions to this Committee proposed weakening the Act – for example, by expanding an existing exclusion, by removing a requirement in an exception to show that disclosure would be harmful (in other words, a “harms test”), or by making an exception more specific, “for greater certainty.” In many cases, there was an absence of compelling evidence that an amendment was required. While we must certainly be responsive to change, elected officials have a responsibility to ensure that the FOIP Act’s purposes of openness and accountability remain paramount in any decision regarding amendment.

The Act must also be practical to administer. Despite carrying my motion to request advice to the Committee on the most sensible application of the FOIP Act to operators of charter schools, no advice was provided and the Committee has referred the matter back to the government.

The Committee heard from smaller municipalities that find it a challenge to administer the Act, as well as from members of the media who would like to be able to obtain information more quickly and more cheaply. I am disappointed that the Committee decided not to agree with two creative proposals I made to address both concerns.

The first proposal was to ask the government to provide support for the development of resources to assist smaller local government bodies in (a) identifying records of public interest that can be disclosed without severing, (b) planning a digitization program for paper records, and (c) making records available to the public at no charge on the local government body's web site.

The second proposal was (a) that a new provision be added to the Act to require public bodies to publish information about their records systems on their web sites, and (b) that the government provide support for the development of guidelines to assist public bodies in this project.

I hope that a future review committee will revisit these proposals.

In addition to providing a right of access to information, the FOIP Act imposes an obligation on public bodies to protect the personal information that citizens entrust to them. Several public bodies proposed making provisions for the disclosure of personal information more permissive, often in cases where the Act already allows for disclosure. These requests highlighted the need for greater understanding of the Act, and more effective training.

Other public bodies, especially law enforcement bodies, wanted to allow more sharing of personal information they have collected for one purpose with private-sector organizations for quite different purposes. The FOIP Act grants very broad powers of collection for law enforcement purposes, and this gives law enforcement agencies a correspondingly greater responsibility to protect that information.

While I am very sympathetic to the good intentions of public bodies, I believe we need to resist demands that are contrary to longstanding privacy principles. If there is a genuine need for disclosure of personal information by a public body, consideration should be given to bringing that forward in the public body's own governing legislation, not creating broad new powers of disclosure in the FOIP Act. I hope that those tasked with further consideration of information-sharing will bear this principle in mind.

Respectfully submitted

[Original signed by Member]

## **Appendix D: Minority Report – Rachel Notley, MLA**

**Rachel Notley, MLA, Edmonton - Strathcona**  
**Member, Standing Committee on Health**

### **NDP Caucus Minority Report – Freedom of Information and Protection of Privacy Act Review**

As the NDP Caucus representative on the Health Committee, I was pleased to participate in the legislatively mandated review of the *Freedom of Information and Protection of Privacy Act* (FOIP). The Committee heard a broad range of submissions relating to the application of this legislation to the day-to-day efforts of citizens attempting to seek openness and transparency in the activities of their government.

All Committee members were able to achieve consensus on a number of recommendations and this collaborative approach is worthy of recognition.

There were, however, certain areas where consensus could not be achieved. Some of these relate directly to whether the legislation can continue to function effectively as a citizen's window into government operations. These selected areas of disagreement are divided into three categories: amendments recommended by the majority of the Committee without consensus, amendments rejected by the majority of the Committee but advocated for in the Minority report completed by the Member from Edmonton Centre, other amendments rejected by the majority of the Committee.

#### **Amendments Recommended by the Majority of the Committee:**

In recommendation 18 the majority of the Committee recommends that the time limit within which the Office of the Information and Privacy Commissioner (OIPC) must complete its review be increased fourfold to one year. The rationales are that this would bring FOIP into line with a similar deadline found within the Personal Information Protection Act (PIPA), and that it is not possible for the OIPC to complete the review within the current 90 day timeline. The NDP Caucus rejects both rationales.

First, PIPA is a different act with a different public policy objective. In short, PIPA is designed to protect citizen's privacy and the privacy of their information held in the private sector while FOIP, in addition to protecting individual privacy and the privacy of information held in the public sector, also is designed to enhance public access to government information.

PIPA itself is not constructed to require the OIPC to interpret the many exceptions built into its application. This fact is evidenced by the fact that 32 of 44 orders issued by the OIPC in 2008-09 related to FOIP matters while only 7 related to PIPA matters. The right to access personal information held by a public body, found within FOIP, mirrors the right to access personal information held by a private body, found within PIPA. However, in contrast to PIPA, FOIP also sets out at least 28 circumstances under which public bodies can deny citizens access to government documents. Given this different construction, the role of the OIPC in adjudicating the attempts by public bodies to rely on these many



exemptions is more critical to the overall process. Hence, the impact of quadrupling the time allowed by the OIPC to review complaints has a qualitatively different impact on the overall functioning of that Act.

The OIPC also suggests that it is not possible to complete a review within 90 days. Nonetheless, they were able to meet this target roughly half the time last year. If the issue is resources, then a majority of members on the Legislative Officers committee should reconsider resource allocation to the OIPC. If the issue is extremely complex cases, then the NDP caucus would be prepared to consider an amendment that allowed for exceptions to the 90 day rule where a reasoned explanation including reference to case complexity is provided. However, we cannot agree that the amendment proposed by the majority of the Committee is the most effective means of addressing the problems while still maintaining the functionality of the Act.

The blanket timeline of one year will ensure that the time for resolution of complaints will increase and the value and the relevance of our access to information regime will decrease.

- **The request to allow the OIPC one year within which to complete a review of a complaint should be rejected.**

#### **Amendments Advocated in Minority Report Member from Edmonton Centre**

With the increase in digitalization, the maintenance and transfer of information has become easier. In many instances, information which is the subject of access requests could be easily provided on public websites, thereby reducing the need for formal requests. At the same time, as the volume of information increases, those seeking information may find it difficult to properly identify or describe the documents in which the information would normally be located. The first proposal would assist smaller public bodies with establishing best practices for public disclosure, reducing the access demands on these bodies over the long term. The second proposal would establish clear strategies to ensure that the access principles in the Act are implemented by compelling public bodies to organize their information in a way that makes it easier for the public to access, therefore reducing the need for drawn out processes involving repeated requests, revisions, complaints and investigations. As a result, the NDP Caucus supports the following two proposals:

- **Government should provide support for the development of resources to assist smaller public bodies in identifying records of public interest requiring no severance which can be made available in a digitalized format to the public as a matter of course without the need for formal requests.**
- **Public bodies should be required to publish information about their records management systems on their websites and government should provide support for the development of guidelines to assist public bodies in this project.**

## Amendments Advocated by NDP Caucus

There were a variety of amendments put forward by the NDP caucus aimed at increasing access to government information by citizens. It is our view that public access to government information within the province of Alberta must be significantly increased. While a best case scenario would involve the application of a rigorous harms test to every one of the at least 28 exemptions upon which public bodies can rely to deny access, it may be that the current adjudication system is not equipped to manage the extensive increase in volume such a change would generate.

However, the third most common exemption used by public bodies to deny citizens access to their government's records is that which relates to section 24, "Advice to Public Officials". Unlike many other exemptions commonly relied upon, this exemption does not require the public body to demonstrate the harm that would arise from that advice being released. This problem is exacerbated by the vague and inclusive language used to describe "advice from public officials". In 2008/09 public bodies denied access on the basis of this exemption 295 times (third only to the exemption relating to the prohibition on releasing personal information of a third party and the prohibition on releasing privileged information – each of which is generally justifiable on its face.)

It is our view that this broad government loop-hole should be severely limited. We make the following recommendation:

- **Section 24 of the Freedom of Information and Protection of Privacy Act should be amended to include a harms test so that public bodies relying on this exemption must be compelled first to show the harm created by the release of the information in question to citizens.**

## Conclusion

On behalf of the NDP Caucus I wish once again to thank all staff who provided support to the Health Committee in its deliberations. In addition, the thoughtful engagement of the many Albertans who took the time to provide input on an, often complex, but very important, issue is greatly appreciated.

All of which is respectfully submitted by,

Rachel Notley, M.L.A.

Edmonton Strathcona



